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[EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE § 6103]

9 Attorneys for Defendants  
10 CITY OF PALOS VERDES ESTATES and  
11 CHIEF OF POLICE JEFF KEPLEY

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA; WESTERN DIVISION**

14 CORY SPENCER, an individual;  
15 DIANA MILENA REED, an  
individual; and COASTAL  
16 PROTECTION RANGERS, INC., a  
California non-profit public benefit  
corporation,

17 Plaintiffs,

18 v.

19 LUNADA BAY BOYS; THE  
20 INDIVIDUAL MEMBERS OF  
THE LUNADA BAY BOYS,  
including but not limited to SANG  
21 LEE, BRANT BLAKEMAN,  
ALAN JOHNSTON aka JALIAN  
22 JOHNSTON, MICHAEL RAE  
PAPAYANS, ANGELO  
23 FERRARA, FRANK FERRARA,  
CHARLIE FERRARA and N.F.;  
24 CITY OF PALOS VERDES  
ESTATES; CHIEF OF POLICE  
25 JEFF KEPLEY, in his  
representative capacity; and DOES  
26 1-10,

27 Defendants.

28 Case No. 2:16-cv-02129-MWF-RAO

Assigned to  
District Judge: Hon. Michael W.  
Fitzgerald  
Courtroom: 5A First Street Courthouse

Assigned Discovery:  
Magistrate Judge: Hon. Rozella A. Oliver

[EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT CODE §  
6103]

**DEFENDANTS CITY OF PALOS  
VERDES ESTATES AND CHIEF OF  
POLICE JEFF KEPLEY'S SUR-  
REPLY TO PLAINTIFFS' MOTION  
TO STAY ENFORCEMENT OF  
COSTS JUDGMENT**

*Vacated Date: July 20, 2020*

Complaint Filed: March 29, 2016  
Trial: N/A

2:16-cv-02129-MWF-RAO

DEFENDANTS CITY OF PALOS VERDES ESTATES AND CHIEF OF POLICE JEFF KEPLEY'S SUR-REPLY  
TO PLAINTIFFS' MOTION TO STAY ENFORCEMENT OF COSTS JUDGMENT

4829-0608-6595.1

1       **I. DEFENDANT CITY OF PALOS VERDES ESTATES' MOTION FOR**  
 2       **JUDGMENT ON THE PLEADINGS IN THE STATE COURT ACTION**  
 3       **WAS GRANTED ON JULY 14, 2020**

4       Plaintiffs' primary argument in support of a stay on the enforcement of the  
 5       costs judgment in this action was that they were likely to succeed on the merits of  
 6       their California Coastal Act claim in the State Court Action, despite facing the July  
 7       9, 2020 hearing on Defendant's Motion for Judgment on the Pleadings in that  
 8       matter. (Dkt. 640, at 3:12-15, fn. 3; 8:13-20.) **However, having taken the matter**  
 9       **under submission after oral argument on July 9, 2020, Judge Hogue in Los**  
 10       **Angeles Superior Court granted Defendant's Motion for Judgment on the**  
 11       **Pleadings** on July 14, 2020, with limited leave to amend to file a Fifth Amended  
 12       Complaint. (Supplemental Declaration of Kevin J. Grochow ("Supp. Grochow  
 13       Decl."), ¶¶ 2-3, Ex. A, B.)

14       In order to state a viable claim Judge Hogue ordered that "Plaintiffs must  
 15       allege that City employees constructed unpermitted structures or formed  
 16       agreements directing others to construct them." (Supp. Grochow Decl., ¶ 2, Ex. A,  
 17       at 25:21-25.) At oral argument, counsel for Plaintiffs conceded that they "can't  
 18       prove" that "City employees actually constructed physical structures on the beach  
 19       or formed agreements to do so." (Supp. Grochow Decl., ¶ 4, Ex. C, at 11:25 –  
 20       12:2.) They requested that if Judge Hogue was going to stick with her tentative  
 21       ruling ordering the same—which she did—"that the Court simply stay the  
 22       proceedings with respect to the remaining defendants so that we can adjudicate this  
 23       issue on appeal." (Supp. Grochow Decl., ¶ 4, Ex. C, at 12:3-7.) This is because  
 24       they acknowledge that "Plaintiffs are unable to amend to allege that the city was  
 25       actively involved in the construction of the rock fort." (Supp. Grochow Decl., ¶ 4,  
 26       Ex. C, at 22:15-18.) As for the other alleged conduct by the City, Judge Hogue  
 27       concluded that "it is not actionable under the Coastal Act." (Supp. Grochow Decl.,  
 28       ¶ 4, Ex. A, at 25:24-25.)

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1           Accordingly, Defendants respectfully request that this Court deny Plaintiffs'  
2 request for a stay on enforcement of the costs judgment in this matter, particularly  
3 in light of these recent developments affecting Plaintiffs' likelihood of success on  
4 the State Court Action.

5           Dated: July 15, 2020

6           KUTAK ROCK LLP

7           By: /s/ Kevin J. Grochow

8           Edwin J. Richards

9           Antoinette P. Hewitt

10           Christopher D. Glos

11           Kevin J. Grochow

12           Attorneys for Defendants

13           CITY OF PALOS VERDES ESTATES

14           and CHIEF OF POLICE JEFF KEPLEY

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## **CERTIFICATE/PROOF OF SERVICE**

*Spencer, et al. v. Lunada Bay Boys, et al.*

USDC Central District Case No. 2:16-cv-02129-MWF-RAO

I, Joanne Kenney, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614-8595.

**On July 15, 2020, I electronically filed the attached document:**

**DEFENDANTS CITY OF PALOS VERDES ESTATES AND CHIEF OF POLICE JEFF KEPLEY'S SUR-REPLY TO PLAINTIFFS' MOTION TO STAY ENFORCEMENT OF COSTS JUDGMENT**

with the Clerk of the court using the CM/ECF system which will then send a notification of such filing to the following:

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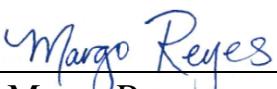
I hereby certify that I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice for collection and processing documents for mailing. Under that practice, this(these) document(s) will be deposited with the

1 U.S. Postal Service on this date with postage thereon fully prepaid at Irvine,  
2 California in the ordinary course of business. I am aware that on motion of the  
3 party served, service is presumed invalid if postal cancellation date or postage  
4 meter date is more than one day after date of deposit for mailing in affidavit.

5 I hereby certify that I am employed in the office of a member of the Bar of  
6 this Court at whose direction the service was made.

7 I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

8 Executed on **July 15, 2020**, at Irvine, California.

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11 Margo Reyes

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## **SERVICE LIST**

*Spencer, et al. v. Lunada Bay Boys, et al.*

USDC Central District Case No. 2:16-cv-02129-MWF-RAO

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